

REMARKS

The Examiner is thanked for his careful analysis, and in particular for his identification of allowable subject matter. Claims 1-20 were originally filed in the present application.

Claims 21-28 were previously added, and claims 2-4 and 9-11 were previously cancelled.

Claims 1, 5-8 and 12-15 were previously amended.

Claims 1, 5-8, and 12-28 are pending in the present application.

Claims 1, 8, 21 and 25 were rejected in the February 9, 2005 Office Action.

Claims 5-7, 12-14, 22-24, and 26-28 were objected to in the February 9, 2005 Office Action, and claims 15-20 were allowed. The objected-to claims are noted, and are not amended in this response, although Applicant may do so in the future in order to advance prosecution.

Reconsideration of the claims is respectfully requested.

Obviousness

In Sections 1 and 2 of the February 9, 2005 Office Action, the Examiner rejected Claims 1, 18, 21 and 25 under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 6,175,747 to *Tanishima et al.* (hereafter, simply "*Tanishima*") in view of U. S. Patent No. 6,259,687 to *Lomp et al.* (hereafter, simply "*Lomp*").

Here, Tanishima describes a TDMA system with a base transceiver station in a wireless local loop system. Lomp describes a CDMA system with multiple antennas.

When a combination of references is used in an obviousness rejection, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Here, there is no motivation in the cited art at all for combining these references. The Examiner's stated motivation to modify Tanishima, "in order to process CDMA signals", is certainly not found in Tanishima – Tanishima discusses a TDMA system, and never mentions CDMA at all. Certainly, nothing in Tanishima suggests that the ability to process CDMA signals is desirable.

Similarly, there is no motivation found in Lomp to modify its system to a structure similar to Tanishima's system (and nor does the Examiner allege that any such motivation exists).

As such, there is no express motivation in the cited art to make the modification or combination described in the Office Action.

There is no implicit motivation, either. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references);

In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

While both references are concerned with wireless systems, there is no “problem to be solved” that would suggested, to one of ordinary skill in the art, to combine the teachings of these references, or to modify Tanishima to include CDMA capability. As the Examiner’s conclusory statement of motivation is not supported in the art of reference, the Examiner is cordially requested to identify objective evidence and make specific factual findings to support his allegation of motivation to combine these references.

As no proper motivation to combine these references has been stated, the obviousness rejections is overcome, and all claims should be allowed.

All rejections are traversed.

SUMMARY


For the reasons given above, the Applicant respectfully requests reconsideration and allowance of pending claims and requests that this Application pass to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,
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